



TAX-EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

201121033

FEB 28 2011

Uniform Issue List: 408.03-00

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XXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXX

SE: T: EP: RA: T2

Legend:

Taxpayer A	=	XXXXXXXXXXXXXXXXXX
Financial Institution A	=	XXXXXXXXXXXXXXXXXX
Financial Institution B	=	XXXXXXXXXXXXXXXXXX
Account A	=	XXXXXXXXXXXXXXXXXX XXXXXXXXXXXXXXXXXX
Account B	=	XXXXXXXXXXXXXXXXXX
Form A	=	XXXXXXXXXXXXXXXXXX
Financial Advisor G	=	XXXXXXXXXXXXXXXXXX
Amount A	=	XXXXXXXXXXXXXXXXXX
Date 1	=	XXXXXXXXXXXXXXXXXX
Date 2	=	XXXXXXXXXXXXXXXXXX
Date 3	=	XXXXXXXXXXXXXXXXXX
IRA X	=	XXXXXXXXXXXXXXXXXX XXXXXXXXXXXXXXXXXX
Year 1	=	XXXXXXXXXXXXXXXXXX

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Page 2

201121033

Dear XXXXXXXXXXXXX:

This letter is in response to your request dated October 18, 2010, submitted on your behalf by your authorized representative, in which you requested a waiver of the 60-day rollover requirement contained in section 408(c)(3) of the Internal Revenue Code (the "Code").

The following facts and representations have been submitted under penalty of perjury in support of the ruling requested:

Taxpayer A, age 72, represents that she received a distribution from IRA X totaling Amount A. Taxpayer A asserts that her failure to accomplish a rollover of Amount A within the 60-day period prescribed by section 402(c)(3) was due to an error made by Financial Advisor G of Financial Institution B. Taxpayer A also represents that Amount A has not been used for any other purpose.

Taxpayer A represents that upon closing IRA X at Financial Institution A, she received a distribution check totaling Amount A and decided to rollover the funds from IRA X into another IRA with Financial Institution B. Taxpayer A provided Financial Advisor G with information showing that Amount A was held in a qualified plan, IRA X, and relied on Financial Advisor G to roll over Amount A into another qualified plan at Financial Institution B. However, on Date 2, instead of establishing an IRA, Financial Advisor G incorrectly deposited Amount A into Account B, a non-IRA account maintained at Financial Institution B. Taxpayer A represents that she believed that Amount A was in an IRA account.

As a result, Taxpayer A was unaware of the incorrect deposit error until Date 3, when Taxpayer A contacted Financial Institution B regarding the maturity of IRA X. Documentation provided shows that Financial Advisor G incorrectly deposited Amount A into Account B, a non-IRA account located at Regions Bank. Specifically, Financial Advisor G has provided a statement under penalty of perjury admitting that he made a mistake in depositing the distribution into Account A even though Taxpayer A had informed him that she intended to establish a qualified account for the purpose of rolling over the distribution from IRA X.

Based on the foregoing facts and representations, you request a ruling that the Internal Revenue Service waive the 60 day rollover requirement with respect to the distribution of Amount A from IRA X.

Section 408(c) of the Code provides that if any portion of the balance to the credit of an employee in a qualified trust is paid to the employee in an eligible rollover distribution, and the distributee transfers any portion of the property received in such distribution to an eligible retirement plan, and in the case of a distribution of property other than money, the amount so transferred consists of the property distributed, then such distribution (to the extent transferred) shall not be includible in gross income for the taxable year in which paid. Section 408(d)(3)(A) states that such rollover must be accomplished within 60 days following the day on which the distributee received the

property. An individual retirement account (IRA) constitutes one form of eligible retirement plan.

Section 408(d)(3)(B) of the Code provides, in relevant part, that the Secretary may waive the 60-day requirement under sections 408(c) where the failure to waive such requirement would be against equity or good conscience, including casualty, disaster, or other events beyond the reasonable control of the individual subject to such requirement. Only distributions that occurred after December 31, 2001, are eligible for the waiver under section 408(d)(3)(B) of the Code.

Section 401(a)(31) provides the rules for governing "direct transfers of eligible rollover distributions".

Section 1.401(a)(31)-1, of the Income Tax Regulations (Regulations) Q&A-15, provides, in relevant part, that an eligible rollover distribution that is paid to an eligible retirement plan in a direct rollover is a distribution and rollover, and not a transfer of assets and liabilities.

Rev. Proc. 2003-16, 2003-4 I.R.B. 359, (January 27, 2003), provides that in determining whether to grant a waiver of the 60-day rollover requirement pursuant to section 408(d)(3) of the Code, the Service will consider all relevant facts and circumstances, including: (1) errors committed by a financial institution; (2) inability to complete a rollover due to death, disability, hospitalization, incarceration, restrictions imposed by a foreign country or postal error, (3) the use of the amount distributed (for example, in the case of payment by check, whether the check was cashed); and (4) the time elapsed since the distribution occurred.

The information presented and documentation submitted by Taxpayer A is consistent with her assertion that his failure to accomplish timely rollovers was caused by errors made by Financial Advisor G of Financial Institution B, which resulted in Amount A being deposited into Account A, a non-IRA account.

Therefore, pursuant to section 408(d)(3)(B) of the Code, the Service hereby waives the 60-day rollover requirement with respect to the distribution of Amount A from IRA X. Taxpayer A is granted a period of 60 days from the issuance of this ruling letter to contribute Amount A into a Rollover IRA. Provided all other requirements of section 408(d)(3) of the Code, except the 60-day requirement, are met with respect to such contribution, the contribution of Amount A into an IRA will be considered a valid rollover contribution within the meaning of section 408(d)(3) of the Code.

No opinion is expressed as to the tax treatment of the transaction described herein under the provisions of any other section of either the Code or regulations which may be applicable thereto.

This letter is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

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Page 4

20121033

A copy of this letter is being sent to your authorized representative pursuant to a Power of Attorney on file in this office.

If you wish to inquire about this ruling, please contact XXXXXXXXXXXX (ID XX-XXXXX) at (XXX) XXX-XXXX. Please address all correspondence to SE:T:EP:RA:T2.

Sincerely,



Donzell Littlejohn, Manager
Employee Plans Technical Group 2

Enclosures:

Deleted copy of ruling letter
Notice of Intention to Disclose